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**IN THE COURT OF APPEAL OF THE STATE OF CALIFORNIA**

**FOURTH APPELLATE DISTRICT**

**DIVISION TWO**

THE PEOPLE,

Plaintiff and Respondent,

v.

RANDAL PHILLIP SEURIN,

Defendant and Appellant.

E046113

(Super.Ct.No. FVI701547)

OPINION

APPEAL from the Superior Court of San Bernardino County. J. David Mazurek,  
Judge. Dismissed.

Lisa M. Bassis, under appointment by the Court of Appeal, for Defendant and  
Appellant.

Edmund G. Brown, Jr., Attorney General, Dane R. Gillette, Chief Assistant  
Attorney General, Gary W. Schons, Assistant Attorney General, Jeffrey J. Koch, Deputy  
Attorney General, for Plaintiff and Respondent.

Defendant and appellant Randal Phillip Seurin entered into a plea agreement, in which he pled guilty to one count of assault by means of force likely to produce great bodily injury. (Pen. Code,<sup>1</sup> § 245, subd. (a)(1).) Pursuant to the plea agreement, defendant was sentenced to the term of 270 days in county jail and was released on his own recognizance on a *Cruz*<sup>2</sup> waiver, with the understanding that if he willfully failed to appear as ordered, the court could sentence him to the maximum number of years punishable for his offense. The trial court later found that defendant violated his *Cruz* waiver by failing to appear for sentencing. The court issued a bench warrant for his arrest. Defendant was later arrested and sentenced to the upper term of four years in state prison.

On appeal, defendant contends the trial court either failed to recognize its discretion to impose a sentence that was less than the maximum term allowed, or abused its discretion in sentencing him to the upper term. We dismiss defendant's claim because he failed to file a certificate of probable cause that fully met the requirements of section 1237.5.

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<sup>1</sup> All further statutory references are to the Penal Code unless otherwise indicated.

<sup>2</sup> *People v. Cruz* (1988) 44 Cal.3d 1247 (*Cruz*).

### FACTUAL AND PROCEDURAL BACKGROUND<sup>3</sup>

Raymond and Darlene Medina arrived at a convenience store and saw Zena Lewis, a woman for whom they had posted bail. Since Lewis had failed to appear for her court date, the Medinas attempted to take her into custody on the bench warrant so they could get back their bail bond money. Mrs. Medina tried to pull Lewis out of the store. When defendant, who was a friend of Lewis, saw what was happening, he told them to leave Lewis alone. Defendant pulled out a knife, began swinging it back and forth, and threatened both Mr. and Mrs. Medina with it.

Defendant was charged with criminal threats (§ 422, count 1), exhibiting a deadly weapon (§ 417, subd. (a)(1), count 2), evading a peace officer (Veh. Code, § 2800.2, subd. (a), count 3), and assault with a deadly weapon (§ 245, subd. (a)(1), count 4).

It was also alleged that defendant had one prior strike conviction (§§ 1170.12, subds. (a)–(d), 667, subds. (b)–(i)), and that he had served three prior prison terms (§ 667.5, subd. (b)). On November 30, 2007, defendant entered into a plea agreement in which he agreed to plead no contest to count 4 in exchange for the dismissal of the remaining counts and allegations. The plea agreement contained a *Cruz* waiver, under which defendant was released on his own recognizance until sentencing. He agreed that he would be subject to any prison sentence up to four years (the maximum penalty for his

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<sup>3</sup> The facts are taken from the preliminary hearing transcript.

offense) if he failed to either report to the probation department or for sentencing on the days set. The court specifically explained to defendant that if he willfully failed to appear as scheduled, it would have the option to sentence him to the maximum years in prison, rather than follow the plea agreement bargain.

Defendant failed to appear for sentencing on January 18, 2008, so the court issued a bench warrant for his arrest. Defendant was arrested in March 2008. The court found that he was in violation of his *Cruz* waiver and sentenced him to four years in state prison.

### ANALYSIS

#### Defendant Failed to Fully Comply with the Certificate of Probable

#### Cause Requirement

Defendant claims the trial court erred in imposing the upper term of four years. This claim must be dismissed because defendant failed to comply with the requirements of section 1237.5 in his statement of probable cause.

Section 1237.5 provides: “No appeal shall be taken by the defendant from a judgment of conviction upon a plea of guilty or nolo contendere, or a revocation of probation following an admission of violation, except where both of the following are met: [¶] (a) The defendant has filed with the trial court a written statement, executed under oath or penalty of perjury showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings. [¶] (b) The trial court has

executed and filed a certificate of probable cause for such appeal with the clerk of the court.”

“The purpose for requiring a certificate of probable cause is to discourage and weed out frivolous or vexatious appeals challenging convictions following guilty and nolo contendere pleas. [Citations.] The objective is to promote judicial economy ‘by screening out wholly frivolous guilty [and nolo contendere] plea appeals before time and money is spent preparing the record and the briefs for consideration by the reviewing court.’ [Citations.]” (*People v. Panizzon* (1996) 13 Cal.4th 68, 75-76 (*Panizzon*).) Thus, “[a] trial court should deny a certificate of probable cause if the appeal is clearly frivolous and vexatious and should execute the certificate if an honest difference of opinion could exist on the merits of the appeal. [Citation.]” (*People v. Hayton* (1979) 95 Cal.App.3d 413, 416, fn. 2.)

Where a guilty plea is made pursuant to a plea bargain, whether a certificate of probable cause is required to challenge the sentence on appeal depends on what the defendant is really challenging. “[T]he critical inquiry is whether a challenge to the sentence is *in substance* a challenge to the validity of the plea, thus rendering the appeal subject to the requirements of section 1237.5. [Citation.]’ [Citation.]” (*People v. Buttram* (2003) 30 Cal.4th 773, 782.) It is well settled that “a challenge to a negotiated sentence imposed as part of a plea bargain is properly viewed as a challenge to the validity of the plea itself.” (*Panizzon, supra*, 13 Cal.4th at p. 79.) A defendant, therefore,

is required to obtain a certificate of probable cause to attack a negotiated sentence on appeal. (*Ibid.*)

Here, defendant is challenging the negotiated sentence imposed as part of his plea bargain. Thus, he was required to obtain a certificate of probable cause pursuant to section 1237.5. While defendant did obtain a certificate of probable cause, it was wholly inadequate. Section 1237.5, subdivision (a) requires a defendant to file a written statement “showing reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings.” Defendant’s request for a certificate of probable cause simply listed various general complaints, but did not state specific grounds upon which he intended to appeal. The certificate request form merely stated that “he was misinformed and forced to sign a plea agreement,” and that he had no choice but to enter into it to secure his *Cruz* waiver release. It also asserted that defendant was requesting “Habeas Corpus and each and every other Writ of Appeal as appropriate and permitted by law.” The request further stated, “Additional issues to be determined by appointed appellate counsel.”

Essentially, defendant was attempting to reserve the right to make *any claim whatsoever on any ground*, rather than articulating any specific claim. Significantly, defendant did not even mention his current claim on appeal that the trial court erred in imposing the maximum sentence following his violation of the *Cruz* waiver. Moreover, the current claim clearly has no merit, since defendant undisputedly violated the terms of

his *Cruz* waiver, which thus permitted the court to impose any sentence up to and including the four-year maximum term.

Since defendant failed to show any “reasonable constitutional, jurisdictional, or other grounds going to the legality of the proceedings,” the trial court should have denied defendant’s request for a certificate of probable cause. (§ 1237.5, subd. (a); see also *People v. Hayton*, *supra*, 95 Cal.App.3d at p. 416, fn. 2.) In other words, the court should have weeded out defendant’s clearly frivolous and vexatious appeal before it reached this point of review. (*Panizzon*, *supra*, 13 Cal.4th at pp. 75-76.)

Since defendant failed to fully comply with the requirements of section 1237.5, we dismiss the appeal. (*In re Chavez* (2003) 30 Cal.4th 643, 651.)

#### DISPOSITION

The appeal is dismissed.

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HOLLENHORST

Acting P. J.

We concur:

KING

J.

MILLER

J.